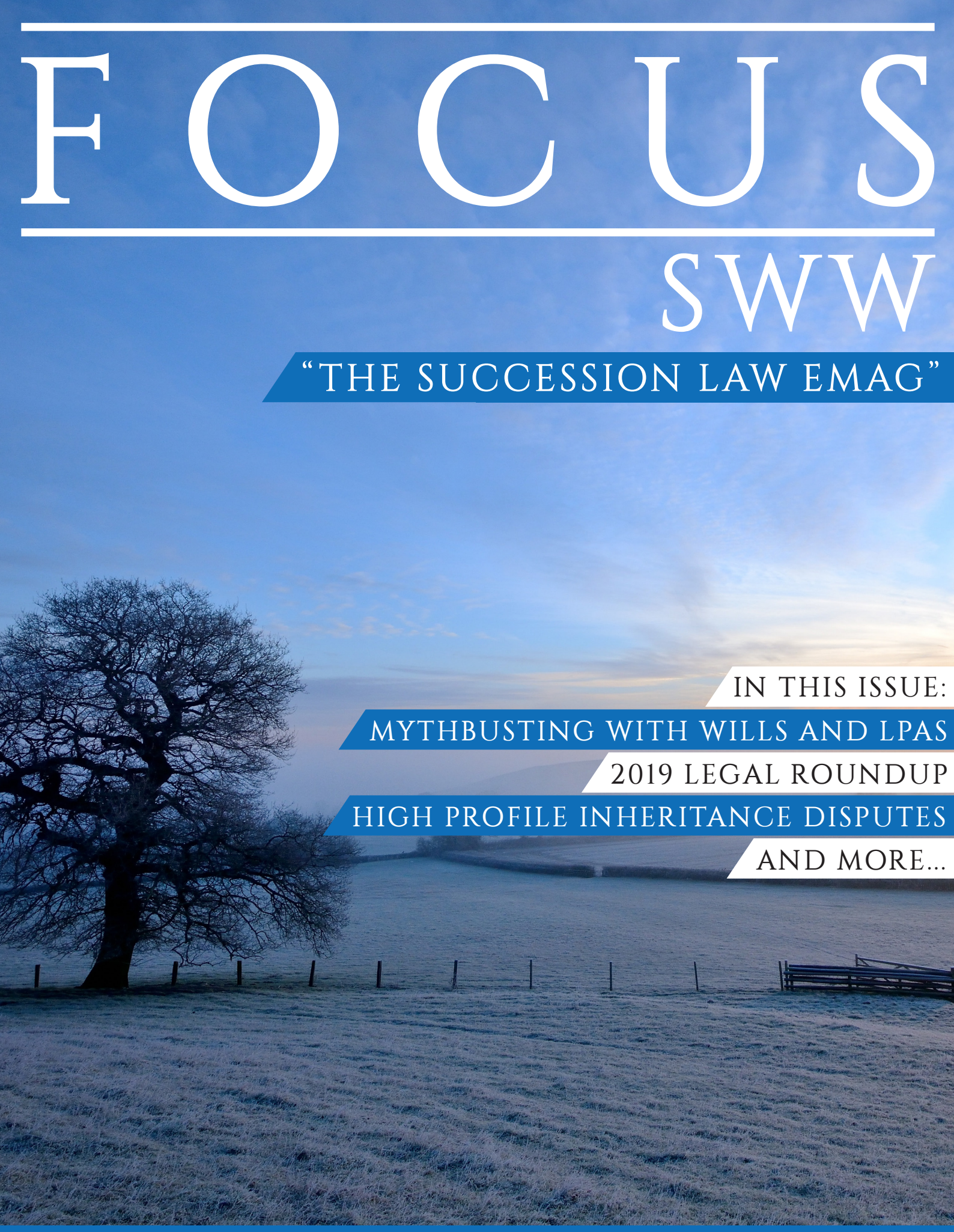
FOCUS SWW

"THE SUCCESSION LAW EMAG"



IN THIS ISSUE:

MYTHBUSTING WITH WILLS AND LPAS

2019 LEGAL ROUNDUP

HIGH PROFILE INHERITANCE DISPUTES

AND MORE...

The Society of Will Writers

ISSUE 15 | WINTER 2020

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CONTENTS

FEATURES

A letter from the Director General

Dear reader,

On behalf of The Society of Will Writers, I'd like to wish you a happy, healthy and prosperous new year.

2020 has been incredibly busy already for the team at the Society, with more members joining, courses booking well into the year and plenty of plans being put in place for the coming months in all areas of our work. There has never been a better time to enter the profession and this of course means for you, the consumer, there is a plethora of options available to you for estate planning services.

Winter for many signals the start of something new and I'm sure amny of you set yourselves new year's resolutions. Sometimes these can be hard to stick to for one reason or another, but this year, as we do every year, I'd like to encourage you to ensure you get your affairs in order and get a Will written. Even if you already have one, think back to when it was written or last reviewed as there may have been changes in your personal circumstances or even in the law which warrants it being revisited. Your Will is one of the most important documents you will ever have and should always be kept up to date.

The Society now has over 1,700 members in the UK as well as even further afield such as Europe, Asia and now Africa too. It's likely that wherever you are, or wherever you find a concentration of expats, you'll find a member of ours.

We have now launched a new website with a greatly improved 'Find a Member' function. Here you can search for any member who may be nearby, or even to check their credentials. If you would like to confirm someone claiming to be a member is a member, you can also call the office at any time or send us an email and the team will be more than happy to help.

If you have any questions regarding the content of this magazine, or about the Society in general, please do get in touch. The team and I wish you all the best for the coming months and the year ahead.

Brian W McMillan
Director General
The Society of Will Writers and Estate Planning Practitioners

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Quarter, half and full page adverts are available within Focus SWW.
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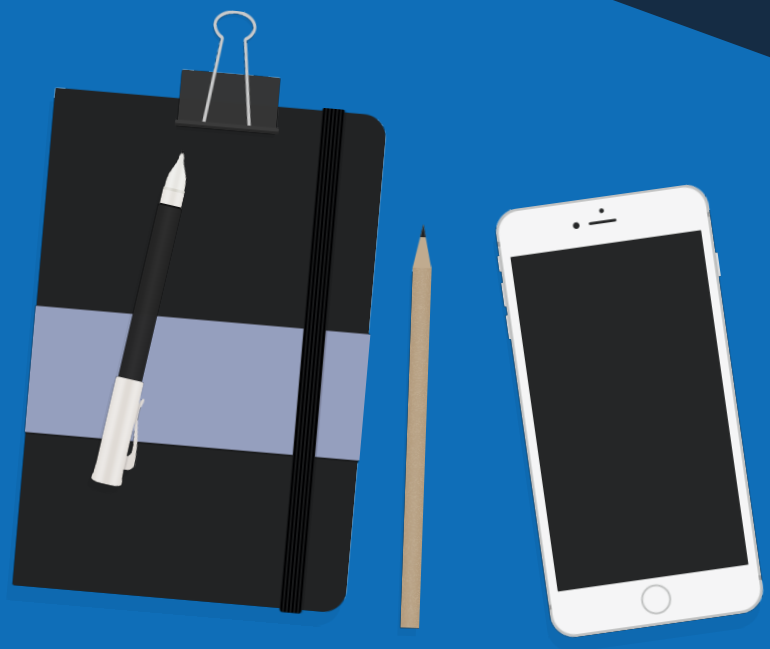


Safe to do business with

Code Compliant

To start this issue we thought we'd take a look back over the past year for a roundup of developments and interesting news relating to succession law, trusts, and will writing.

Heterosexual civil partnerships made legal

Last July the Supreme Court heard the case of Steinfeld and Keidan, a heterosexual couple who were deeply opposed to marriage and wished to form a civil partnership for the legal protection that a formally recognised relationship provides. The Supreme Court decided that England & Wales's law only allowing homosexual couples to enter civil partnerships was incompatible with the European Convention on Human Rights.

As of 2nd December 2019, legislation has come into force allowing heterosexual couples to form civil partnerships. This has a minor effect on will writing, as it means that all couples may now include a clause in their will stating that it is being made in contemplation of civil partnership. The wider effect will of course be the IHT benefits of civil partnership (identical to those of marriage) now being open to more couples.

Probate fee hike scuppered again

For the second year in a row there was an attempt to increase probate fees. The fee structure was due to change to a tiered structure based on estate value from 1 April 2019. Earlier this year, a week before the change was due to be implemented, it was announced that the increase would not be going ahead this year. The statutory instrument that would have introduced the new fees missed its deadline to be laid before Parliament. It's safe to assume that the probate fee increase will happen though, so this is certainly one to keep an eye out for next year.

A move towards opt-out organ donation

The Organ Donation (Deemed Consent) Bill

received royal assent this year. This change means that those who die domiciled in England from Spring 2020 will be deemed to be organ donors unless they have opted out in lifetime. This is a reversal of our current opt-in system.

When discussing funeral and organ donation wishes when taking instructions this is something new you will need to raise as many people may not be aware of the change and wish to clearly opt out.

A collection of interesting probate and undue influence cases made headlines

It has been a very interesting year for contentious probate. This year we've seen everything from forfeiture to proprietary estoppel, and one very interesting undue influence case that included a vary rare challenge on the grounds of fraudulent calumny. See our write ups here, here and here.

The second half of the Office of Tax Simplification's report was released

The Office of Tax Simplification finally released their second report this summer. This report made plenty of recommendations on ways of simplifying IHT rules on lifetime gifts, interactions with CGT, and businesses and farms. Recommendations centered around rolling the many lifetime gift allowances into one larger relief to help the general publics understanding of IHT.

Unfortunately, no recommendations were made on the RNRB and downsizing provisions despite their admission that it is a complex area that is poorly understood. Shockingly the report even found that some solicitors opt not to advise on the RNRB because it is too complicated! Hopefully this is an area that the OTS will look at again in future.

WHO SHOULD WRITE MY WILL?

You've got a lot of options available to you for writing a Will in 2020, all of which are easily accessible, some even from the comfort of your own home. There are many different professionals for you to choose from such as members of The Society of Will Writers, Solicitors, IFAs or the plethora of other Will Writing firms that are out there. You also have online services, or you could even write your Will yourself using a DIY kit. However, there are still some two thirds of the UK's adult population which don't have a valid Will so with so many options available why doesn't everybody have one, and which is the best route to choose?

REGULATED VS. UNREGULATED

It's necessary to point out at this point that the Will Writing profession isn't regulated by statute which means that anyone can advertise themselves as a Will Writer and they don't have to be a part of any governing body. This doesn't mean to say that no Will Writers are regulated and that's where we come in.

No longer are solicitors your only option when looking for a professional to write your Will. The Society of Will Writers was formed in 1994 and has been instrumental in the development of the Will Writing profession. Our form of regulation is entirely voluntary and this means that anyone who wants to become, or is already a Will Writer (solicitors and other professionals included), can join our Society so that we can provide them with the necessary training and support, as well as enforcing our own mandatory requirements such as Professional Indemnity Insurance and adherence to our Code of Practice. It also means that if in the unfortunate event that something does go wrong, the consumer is protected and has access to redress through our own complaints handling procedure. The Society is always on hand to provide support and assistance not only to our members, but the wider public as well through our free public helpline.

We currently have over 1,600 members who have willingly signed up to self-regulation based across England, Wales, Scotland, Northern Ireland and even further afield in Central Europe, Asia and the Middle East, taking the Society's values truly global. Members of the Society are experts in what they do as being Will Writers and Professional Estate Planners means for the most part, it's all they do. Our members can offer the most current advice, often from the comfort of your own home, no matter where you're based.

DIY WILLS

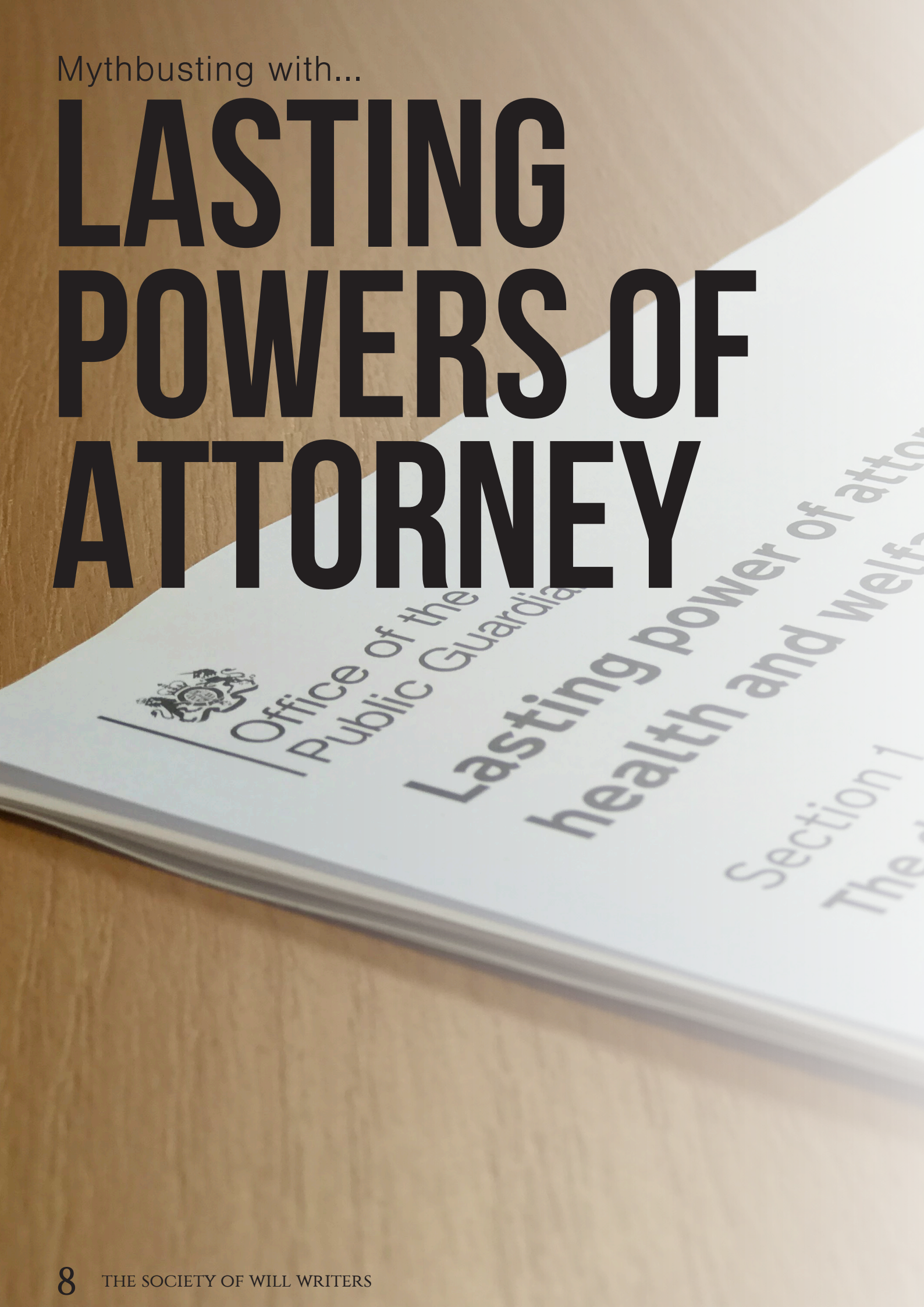
We've looked at DIY Wills in depth a few times before and truthfully, we'd strongly advise against this option. If you make any mistakes whilst writing your Will and you don't realise before you're able to write a new one, there could be questions regarding your intentions or problems executing your Will when you've died. This may result in your estate not being distributed how you would have liked which could easily cause unnecessary problems and upset for your loved ones during what will undoubtedly be a difficult time.

Given the complexity of modern families, a simple or DIY Will may not be suitable. We always say there is no one-size fits-all when it comes to Wills so we recommend in all cases to seek the advice and the services of a professional to ensure that your wishes are correctly recorded.

To speak to a member of the Society near to you, visit our find a member page or call us on 01522 687888.

Mythbusting with...

LASTING POWERS OF ATTORNEY



You may have seen in a previous issue our article on the reasons to have a Lasting Power of Attorney (LPA). However, there are common misconceptions on why an LPA may not be necessary which this article explores further.

"I don't need an LPA because my next of kin can make important decisions on my behalf"

Not true. No-one can act on your behalf or make decisions on your behalf if they have not been legally authorised to do so.

"My Will has appointed executors, so they'll be able to make decisions on my behalf."

Not true. A Will is entirely separate to an LPA. Executors appointed in a Will only have the power or authority to distribute your estate as requested and in line with your Will, on death. They have no authority to make decisions on your behalf during your lifetime.

"I don't need an LPA until I become elderly and of ill health"

Not true. An LPA can be made by anyone over the age or 18 who has full mental capacity. Someone may lose capacity or no longer be able to make decisions due to an accident, being in a coma or other mental illness.

The sooner you put an LPA in place the better, as you know provisions will have been put in place in the event the unthinkable happens. If you wait and, in that time, lose capacity, it will be too late to get an LPA and your loved ones will need to apply for a Deputyship Order from the Court of Protection. This will not only take a long time but also a costly process.

"Once my health and welfare LPA is registered, it means someone else can make decisions for me and I don't want that while I have capacity"

Not true. A health and welfare LPA only comes into effect when the donor loses capacity even if the LPA has been registered.

"Getting an LPA is expensive"

The cost of registering an LPA is £82 per document. In comparison, if you fail to make an LPA and lose capacity, your family will be left with no other option but to apply for a Deputyship Order, this will cost significantly more.

"Me and my partner have joint bank accounts so we don't need LPA's"

Not true. This is always the most alarming to couples when they are told that even if they have a joint bank account, this does not mean the partner will be able to automatically access funds to pay for bills, mortgage or general expenses. If the spouse was to lose capacity, the bank have the ability to remove access and freeze the account until they receive a copy of the registered LPA which is extremely stressful for the spouse.

To put an LPA in place for you or your loved ones, please contact one of our members today.

HOW CAN A DISHEARTENED BENEFICIARY CONTEST A WILL?

It is such a shame that in todays' society, will disputes are becoming increasingly common. Reasons for this of course vary but it is generally down to "who gets what" and the value of the estate which is involved in the decision making when contesting a Will.

When a loved one passes away, this can be devastating for friends and family. Even moreso when they find they have been written out of a Will or not received as much inheritance as they expected to. The grief can soon change to feelings of pure spite towards the deceased.

There are various reasons for someone not being provided for in a Will which includes not having spoken to the person for some time, strained relations with the child, separation from their husband or simply a child already being very wealthy and not needing the inheritance. We've even had these reasons given in the letter of wishes – "my daughter would not watch football with me, my son refused to support the same football team as me." Sounds random but these are real reasons given by testators...notice a theme?

Either way, being written out of a Will can not only cause problems within the family but this is where inheritance disputes occur and matters become contentious.

There are two different approaches to contesting a Will. The first is a challenge by a disappointed beneficiary who feels that the will doesn't make "reasonable provision for them". In these cases, they aren't seeking to prove that the Will is invalid, just that provision should have been made for them. The second is a claim that the Will itself is invalid for some reason so the whole Will fails.

We'll look at the common 'provision claim' first.

Claims that the Will failed to Make Reasonable Provision

Who Can Challenge a Will for Provision?

Certain relatives and dependents can claim under the Inheritance (Provision for Family and Dependants) Act 1975 on the grounds that the distribution of the estate does not make reasonable financial provision for them.

The classes of those who can make a claim are set out below:-

- A spouse or civil partner
- A former spouse or civil partner – they must not have married or registered a new civil partnership
- A person who cohabited with the deceased as husband and wife for 2 years prior to the deceased's date of death.
- A child
- A person treated as a child of the family (e.g. stepchild)
- A financial dependant

What are the Grounds?

If the beneficiary or applicant can evidence that they were either financially dependent on the deceased and an insufficient share of the estate or monies was left to them, or that they fall into one of the categories of family member and 'reasonable provision' has not been made they can bring a claim under the Inheritance (Provision for Family and Dependants) Act 1975. An example of this might be a testator who makes no provision in their Will for their child who is dependant on them.

What are the Other Grounds for Challenging a Will?

The second category of challenges are claims that the Will is invalid for some reason. There are generally 3 other main reasons why a Will would be challenged. Let's look at these in more detail.

The Will is Invalidly Signed

The requirements for a valid will are set out in section 9 of the Wills Act 1837 which are:

- It must be in writing
- It must be signed by the testator, or signed on their behalf
- The testator must sign or acknowledge their signature in the presence of 2 witnesses.
- The witness must sign or acknowledge their signatures in the presence of the testator.

If these requirements are not met then the Will won't be valid and will fail.

The Testator Lacked Capacity at the Time of Making the Will

The testator must have capacity at the time of making the Will. They must also know and approve the contents of the Will. The test for capacity to write a Will is the Banks v Goodfellow test. It must be shown that the testator:

- Understands the nature of making a Will and its effect
- Understands the extent of their property/ assets
- Understands and appreciate the moral claims they ought to give effect to i.e. who they might reasonably be expected to provide for
- Is not suffering from any disorder of the mind that is 'poisoning their affections' and interfering with how they distribute their estate.

The Testator was Unduly Influenced

Undue influence is defined as "influence by which a person is induced to act otherwise than by their own free will or without adequate attention to the consequences."

Effectively, this involves applying pressure on the testator and making them do something by using force or threats which takes away their ability to make decisions at their own free will.

Due to its nature, undue influence normally happens behind closed doors and ordinarily by people who are in a position of trust i.e. solicitor and client.

As it can be very discrete, a claim of this sort can be very difficult to prove as the Court will need to rely on the evidence presented to them. Therefore, the only way it would be possible to illustrate any undue influence is by the claimant evidencing that there is "no other reasonable explanation" for the Will being drafted as it is.

For more information please see our article which solely discusses the issue of undue influence and Wills.

What Happens when you Contest a Will?

The Court will take into account the following guidelines when considering a claim brought under the 1975 Act. These are as follows:

- The financial needs and resources of the beneficiaries and applicants (if they are not a beneficiary)
- Any obligations and responsibilities the deceased had towards any beneficiary or applicant
- The size and nature of the estate
- Any mental or physical disability of the beneficiary or applicant.

When considering claims brought by a spouse or civil partner, the Courts will consider the age of the applicant and duration of the marriage or civil partnership.

The test when considering the standard of provision is "such provision as would be reasonable in all the circumstances to maintain the applicant."

If the applicant is successful then the courts will decide what award should be made. The Will remains valid, but the way assets are distributed will be varied by the court to make provision for the applicant. This varies by case as what award is appropriate will depend on the circumstances of the applicant, the size of the testator's estate, and what assets are available.

For the invalidity claims the outcome is very different. If the claimant is successful in bringing their claim and the testator had made an earlier Will, the estate will simply be distributed in accordance with the earlier Will. However, if the testator had not made an earlier Will, their estate will pass in accordance with the laws of intestacy.

Is there a Time Limit for Contesting a Will?

Yes, but again this varies. A provision claim must be brought within 6 months of the grant of probate. It is therefore advisable for executors not to distribute the estate for at least 6 months from the grant of probate or even wait another 4 months after that as the applicants have 4 months from the issue of proceedings to serve them on the other side. If an executor waits before distributing the estate is protected from any liability under the 1975 Act.

For claims that the Will is invalid there is no time limit.

What Happens if an Executor or Trustee Contests the Will?

If an executor or trustee contests the Will for any reason, they simply need to renounce their position as there would be a conflict of interest if they continued to act. It is always advisable to appoint substitute executors and trustees.

Example Cases

As more and more Wills are being contested by disappointed family members who believe they should have had either a share or a greater share of the inheritance, cases tend to fall in the public eye.

Let's take a look at an earlier case of Ilott v Mitson and Others, 2015.

In this case, Mrs Ilott brought a successful claim under by the 1975 Act against her mothers' estate despite being excluded from her mother's Will. The estate was valued at around £480,000 and had been left to 3 animal charities.

Mrs Ilott was estranged and therefore her mother had deliberately excluded her daughter from the Will and instead left her estate to 3 animal charities which it was found she had no connection with.

Previously, adult children who tried to claim under the Inheritance Act on the grounds of reasonable financial provision not being made for them, were unsuccessful as there was no evidence that as an adult, they were being provided for by their parents. Despite this, at first instance, Mrs Ilott was successful in her claim and was awarded £50,000.

The decision was appealed by Mrs Ilott on the grounds that the award was insufficient as it would deprive her of her means tested benefits

and not provide her with enough funds to purchase the housing association property she was currently residing in. The Court of Appeal awarded her £143,000 to enable her to buy her home along with an additional £20,000 for income.

The decision was appealed to the Supreme Court who held that as Mrs Ilott had not been financially dependant on her mother, she did not require an income and that any provision was reasonable given the circumstances. Her original award of £50,000 was therefore reinstated.

Looking at more recent cases which have been in the public eye is a recent ruling by the High Court which determined that a claim brought by 3 sons for a share of their mother's £1 million family home was unsuccessful. Mrs Rea died in July 2016 at the age of 86 and in her final Will which she made in 2015, she left her South London home, which was her main asset and worth roughly £1 million, to her daughter Rita. She had left a note with her Will which stated that her sons did not help with her care in comparison to her daughter who had been her sole carer for many years and therefore if any of the sons challenged her Will, she wanted any claim from them to be defended on the basis she did not believe they should have a share in her estate.

It was found that her 2015 Will replaced an earlier Will in 1986 which had left her entire estate to be shared equally between her 4 children. The sons who were written out of the mother's Will, brought a claim on the basis that their sister had "poisoned" their mums mind by claiming the sons had abandoned their mother so that she would solely inherit the family home. They relied on the grounds of undue influence and made an application to strike out the 2015 Will and reinstate the earlier Will made by their mother in 1986.

It was ruled that Mrs Rea was very strong minded and at the time she made her revised Will, it was clear she knew what she was doing. Therefore, her mind had not been influenced and she made the decision to write her sons out of her Will on her own accord. For further information please see our earlier article.

More recently, this month, there is yet another case in the public eye where a 77 year old has brought a claim against his niece, Lady Natalie Wackett, for half a share of his father's £2.4 million fortune on the basis that he was written out of the Will for being an "unwanted baby." He was born during World War 2 while his father was serving in the RAF and at the time his parents were unmarried. It was for this reason that his parents grew to resent him and favoured his siblings instead.

Mr Johnston, the claimant, said his parents always resented him and his mother often told him that she "would have been a Hollywood star if it wasn't for you" as she had always dreamed of being on screen. It was relevant however that his father had promised that the income generated by the family business would "provide me with an income for life."

As he grew older, the relationship continued to be strained between Mr Johnston and his father which led to his father cutting him out of the family inheritance and instead leaving all his inheritance to his granddaughter.

Mr Johnston argued that he is hard up and works as a bus driver to keep afloat. This is in comparison to his niece who was given her grandparents entire fortune and has the family business.

Lady Wackett in comparison argues that he was not an "unwanted war baby" and was loved by his family. Her case is that his gambling habit along with cheating the family business is what drove the family apart. In addition, he had not looked after his parents as they grew older, did not reconcile with them or even attend their funerals.

The case continues.

DEATHBED GIFTS: DO THEY EXIST AND ARE THEY VALID?

Sometimes, a gift is given by a person who contemplates that they may die soon. This is known as a "gift in contemplation of death" but is commonly referred to by its Latin translation of "donatia mortis causa."

A gift of this type is ordinarily made by people who are very ill or due to undergo serious surgery and make a gift during their lifetime which will take effect on their death. As no legal documentation (or any documentation for that matter) is required to make a donatia mortis causa, there are few rules which apply. In addition, there is no need for probate or execution unlike a Will.

WHAT ARE THE CONDITIONS FOR THESE TYPE OF GIFTS?

To qualify as a donatio mortis causa:

- The gift must be made by the donor in contemplation of the donor's impending death.
- The gift must be contingent on the donor dying.
- The donor must part with the gift or deliver it in some way to the donee.
- The subject-matter of the gift must be capable of being given away in this manner.

If there was a gap of several months after the gift had been made and at the time of the gift being made, the donor was not seriously ill/contemplating death from a known cause, the gift will simply not stand.

WHO HAS OWNERSHIP OF THE GIFT WHEN IT IS MADE?

Once the gift is made, the donor would give up control of the gift as soon as it made to the donee.

However, the donee would not absolutely own the gift until the donor has deceased. The reason for this is because if they survived the illness or operation (as per the examples used above), the gift would simply be void and the donee would no longer have any ownership right to it. The donor can revoke the gift at any time before their death which is why the donee would only own the gift on the death of the donor,

ARE DEATHBED GIFTS VALID?

Deathbed gifts are perfectly valid providing the above conditions are met.

However, as these gifts are made when the person is on their deathbed and extremely vulnerable, issues can arise with regards to the donor's capacity and whether they understood the effect of making the gift – especially gifts of high value. As with ensuring the donor had capacity at the time of making the gift, it would be important to somehow ascertain that they were not placed under any undue influence either.

WHAT IF I ALREADY HAVE A WILL?

Ordinarily, a Will would govern what happens to assets on a death. Donatio mortis causa is an exception to that rule, which states that providing the gift was made in contemplation of imminent death, it will override anything in the Will or under intestacy. This is likely to cause conflicts between potential beneficiaries who are likely to contest the validity of the deathbed gift.

CHALLENGING A DEATHBED GIFT

Courts will assess in detail how the deathbed gift was made and in what circumstances. It will be upheld only where there is clear evidence that the conditions for a valid gift are met. However, each case will be considered on its own facts.

Whilst deathbed gifts are perfectly valid if made correctly, it is of course better to dispose of your assets properly by way of a Will which will enable you to include trusts, set out funeral wishes and name guardians for minor children for example.

It is important to ensure you review your will regularly to prevent death bed gifts being made and then potentially challenged by disgruntled family members or those who were due to benefit under the Will. We recommend a Will is reviewed every 3-5 years or when there is a change of circumstance such as marriage or children.

To put a Will in place for you or your loved ones, please contact one of our members today.

Mythbusting with... WILLS

Earler we had a look at some myths with Lasting Powers of Attorney, so here are 10 common misconceptions about writing a Will.

"I already have a will – I don't need a new one"

You already have a will in place. Great! Do you know where it is? Even if you have a will it's best to keep it under review to make sure that it still matches your personal circumstances. After all, you wouldn't purchase a car and assume it doesn't need any maintenance for the rest of your life.

Here at the SWW we recommend everyone reviews their will every 3 to 5 years or earlier if your situation changes. These changes could be due to marriage, divorce, birth of new children or grandchildren, death of a beneficiary, or even coming into some money. This also makes sure you keep abreast of any changes to the law that effect your planning so you can be sure that your will is as effective as possible.

"Everything will go to my partner anyway"

A dangerous assumption but one that we face every day. For some people this is actually correct, but are you sure it's true for you? If you die without a will the "rules of intestacy" will apply and your estate will be distributed to surviving relatives by a strict hierarchy.

If you are married or in a civil partnership and you have no children then if you die all of your assets will pass to your spouse or civil partnership. This is also the case for married couples and civil partners who have children but whose estates are valued at less than £250,000. For everyone else the situation is much more complicated.

If you and your partner are unmarried or have not entered into a civil partnership then the rules of intestacy are not your friend. Intestacy doesn't recognise these relationships so your partner would receive no benefit from your estate. The concept of 'common law marriage' is only a myth and has no legal basis.

"Making a will is complicated"

Making a will doesn't need to be a complicated process. You can see a professional and highly skilled Will Writer in the comfort of your own home at a time that suits you. The benefit of using a professional Will Writer is that they will be able to advise you every step of the way and the complicated bits like actually writing the will and dealing with HM Land Registry will all be handled by your Will Writer for you. Giving your instructions for your will can be as simple as having a chat over a nice cup of tea.

"Making a will is morbid"

We don't like to talk about death. It's a topic that can make people feel uncomfortable. That doesn't mean that the process of making a will has to be a solemn affair. We prefer to look at the positive side of writing a will. By putting a will in place you're giving yourself peace of mind because you'll know that your affairs will be in order. You'll also know that your family or those who are important to you will be taken care of.

"Once I've written a will it can't be changed"

This is another one that we hear quite often. There is a general fear that once you have written a will that's it. Well thankfully that's not the case! As long as you retain the capacity to make a will you are totally free to revoke it or to write a new will at any point. In fact, we encourage it (see point 1)!

"I need a solicitor to write a will"

While we certainly recommend using a professional to write your will that doesn't need to be a solicitor. With 1700 professional Will Writers who are SWW members there are plenty of specialists out there who you can be sure are properly trained, insured, and ultimately safe to do business with.

"My family will sort everything out between themselves once I'm gone"

Unfortunately, if you die without a will your family will not be able to distribute your estate however they wish. Your estate would pass according to the rules of intestacy, which is essentially the will that the government has written for you.

The only way to guarantee that your assets pass to who you want them to on death is to have a will.

"Wills are for the rich – I don't have anything to give"

Most people have something of value when they die. You may not be rich, you may not own your own home, but you almost definitely have something. Whether this is some money in the bank, jewellery, or even items that have no real monetary value but are quite sentimental to you. Chances are you'd want to make sure the assets you do have end up in the right hands.

"My debts will die with me"

Wouldn't that be nice? Unfortunately, it's not true. If you die with any debts outstanding these will need to be paid from your estate. Your will can direct where everything left over will pass and can make specific gifts of certain assets, so they won't fall into the pot to be sold to cover debts unless absolutely necessary.

"Wills are for the elderly or the ill"

While a person who is elderly or ill may require a will more urgently, wills are for everyone over 18 with mental capacity. Writing a will shouldn't be put off as the longer you leave it the more risk there is of it being too late. Even if you are at the other end of the spectrum and are young and healthy you can still benefit from a will, especially if you have minor children. A will isn't all about distributing your assets on death, it is also an important document to appoint guardians. These are people who you appoint to formally take care of your minor children if you were to die.

If you haven't yet written a Will, or would like to update an existing Will, speak to one of our members. You can search for them through our Find a Member section, or call us on 01522 687888.

HIGH PROFILE INHERITANCE DISPUTES

What cases were in the public eye towards the festive period? Well we've got some bitesize articles for you to look at below – surprisingly the articles share one common ground – disputes over inheritance.

BLYTH V ESTATE OF CHARLES CAUDLE (2019)

This has been quite a high-profile case for some time following an ongoing dispute between Mr Caudle's fiancée and his ex-wife over his estate.

Background

After divorcing his wife Ms Muddleman in 2007, Mr Caudle started a relationship with another successful business owner, Ms Blyth, in 2008. Shortly after, Ms Blyth moved into Mr Caudles multi-million-pound home and soon after, they were engaged.

In 2010 Ms Blyth moved out of the home with their children and into a bungalow owned by Mr Caudle worth around £300,000. It is claimed the reason for this was because there was friction between his son and Ms Blyth's children. However, they continued to be in a loving relationship until he died in 2016 following a battle with cancer.

Mr Caudle died leaving a Will which he had signed in 2014. In the Will it named his ex-wife as the executor and trustee of his estate with his son as the only beneficiary. Incidentally the Will did refer to Ms Blyth as his fiancée but only provided for her once the gifts and any other legacies were paid out first. There was no provision for her to remain in the bungalow with her children.

Ms Blyth argued that after she moved out of the home, she maintained to be in a relationship with him and he had always told her she would have a "roof over her head." However, it was very clear that he had not gifted her the bungalow and therefore action commenced against Ms Blyth on the grounds of trespass.

The Claim
Ms Blyth maintained her position that Mr Caudle had assured her that she would always have a "roof over her head" and referred to a letter of wishes that had been placed with his Will. On this basis she brought a proprietary estoppel claim and was required to show the following:

An assurance that was made to that she would acquire the bungalow
She relied on that promise or assurance
As a result of relying on the promise, she had suffered a detriment.

Outcome
It was found that there was no letter of wishes with the Will. Therefore, the Judge found against Ms Blyth. There was no evidence to show Mr Caudle had ever intended to gift her the bungalow and the Judge was of the belief that at the time Ms Blyth moved out of the main home, their relationship ended around this time. Had Mr Caudle truly wanted to provide for Ms Blyth, he would have done so.

Ms Blyth was ordered to leave the property and pay court fees in the sum of around £80,000.

Had Mr Caudle written a letter of wishes which intended to illustrate his intention to gift the bungalow to Ms Blyth, the outcome could have been very different. It is also relevant that if Ms Blyth was still living with Mr Caudle at the time of his death, she could have brought a claim under the Inheritance (Provision for Family and Dependants) Act 1975 if she could evidence that she was dependant on him.

KAHRMANN V HARRISON-MORGAN (2019)

Background
Dr Kahrmann was a wealthy man and shortly after leaving his wife in 1991, he started a relationship with Ms Harrison-Morgan. They had two children and lived in a lavish home in Belgravia, London.

They later separated and Dr Kahrmann returned to Germany where he lived until he died in 2014.

When Dr Kahrmann returned to Germany, a developer offered to buy the property in London where his partner and 2 children were currently living. The offer made was contingent on the home being sold as a vacant possession – this meant Ms Harrison-Morgan along with their children would need to vacate the home before exchange of contracts. Unfortunately, Dr Kahrmann died during negotiations.

Ms Harrison-Morgan argued that a deal was made between her and the executors (incidentally Dr Kahrmann's daughter) where the profits were to be split between his 4 children (2 from a previous marriage) and her. Therefore, the home in Belgravia was sold and the £4.4 million sale proceeds were split accordingly between Ms Harrison-Morgan (who received £2.2 million) and the children.

The Claim
One of the daughters, who was also Dr Kahrmann's executor, sued Ms Harrison-Morgan after payment had been made on the basis that there was a trust in existence with Dr Kahrmann's business partner and therefore by making the payment directly from the buyer to Ms Harrison-Morgan, this was a clear breach of the trust terms. She argued that the money should be repaid and distributed amongst the children who were the beneficiaries of the trust.

Outcome
In first instance, Ms Harrison-Morgan was successful in her claim on the grounds that she claimed the payment arrangement was made before Dr Kahrmann's death.

The case was appealed to the Court of Appeal who overturned the decision and stated the money should be repaid to the trust which was intended for the 4 children.

Over a million pounds has already been spent in legal fees with a further £500,000 in fees from the Court of Appeal which Ms Harrison-Morgan has been ordered to pay. The case is being heard by the Supreme Court so watch this space.

BARNABY V JOHNSON (2019)

Yet another high-profile case which was recently heard by the High Court where a claim

was brought by an unrepresented Claimant against her late mother's Will.

Background
Mrs Bascoe made a Will in 1992 in which she left an inheritance worth £10,0000 to each of her four children.

Following a very strained relationship with her 2 daughters, she decided to review her wishes and in 2005 instructed Mr Whynter to draft a revised Will in which she expressed that she did not wish to leave her daughters anything "beyond the legacies I have made in this Will." She cited her daughters as being "rude, unpleasant and in some instances physically violent" behaviour towards her and for this reason she expressed her wish to leave £100 to her daughter Patricia Johnson and £500 to her other daughter Beverley. The remainder of her estate was to pass to her son Barnaby who was also a named executor alongside Mr Whynter.

The Claim
Mrs Bascoe died in 2015 at the age of 96. Ms Johnson claimed her mother lacked capacity at the time the revised Will was made due to her mother showing signs of dementia in 2001 and therefore her earlier Will should take effect. She further cited claims of undue influence by her brother Barnaby along with the claim that her mothers' signature had been forged.

It was found that whilst Mrs Bascoe did later lose capacity, at the time she made her revised Will, it was clear she had capacity. On review of medical records, it was also relevant that the family had only raised concerns of her mother suffering from dementia in 2008 which was 3 years after the revised Will had been made. Mrs Bascoe was formally diagnosed in February 2009 as suffering from Dementia.

Mr Whynter argued that there was no concern of undue influence when he took her instructions for the revised Will.

Outcome
After consideration, the Judge found against Patricia Johnson and ruled the 2005 Will was indeed valid. There was no evidence of undue influence or that the signature had been forged – if this had been the case then realistically the witnesses to the Will would have been part of the alleged collusion.

Although it was clear that Mrs Bascoe had changed her mind on a number of occasions about the split of her estate before the final Will had been drawn up and that no attendance notes had been made, it was relevant that alongside the Will, Mrs Bascoe had written a letter of wishes explaining the reasons for the disproportionate sums of money to her children (as explained above) and it was very clear she did not want her daughters to benefit further from her estate.

So, what's the take away point from all of this? Always ensure clear instructions are taken from your clients. If they wish to leave disproportionate sums to children, explore the reasons for this, ensure letter of wishes are written but more importantly ensure that as a will writer, you always take detailed notes of every meeting with the client and advise them of any risks to ensure this does not later come back to you with a potential negligence claim.

Let's see what interesting cases 2020 holds…

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If you have any questions about Wills, or any of the content in this magazine, please contact The Society of Will Writers:

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Funeralcare

A unique celebration for every life

More people than ever before want their funeral to be a celebration of life, with unique details that are more personal, according to the UK's largest funeral trends report from Co-op.

We found that only 1 in 10 people would choose a traditional, religious service, while one in three would prefer their friends and family to get together for a celebration and 33% don't want any fuss at all.

There's something for everyone

This change is reflected in the types of funeral we're carrying out for our customers. 86% of our Funeral Directors said people are more open to unique and personalised funerals, with details like unusual flower arrangements or a service themed around the person's favourite hobby.

Samantha Tyrer, Managing Director of Co-op Funeralcare said: "Our funerals represent the unique life an individual has lived. More so than ever before we're seeing requests for wonderfully personalised ceremonies, whether that be on the 18th hole of a golf club or having a pet dog present on the day. The choices are endless and so it's absolutely critical that people make their wishes known to ensure they're not missed."

And if you'd prefer a simpler choice, we also offer a Cremation Without Ceremony. It allows families to remember their loved one in their own way, at a location of their choice.

We're here to do right by you

So, whether you think you'd like no fuss or something more elaborate like a rainbow coffin, a tractor instead of a hearse, or for the service to take place at the local zoo, it can be done. But it's important to talk to your friends and family about your wishes to make sure you get your unique goodbye.

Co-op Funeralcare has been at the heart of communities for over 100 years, and we're experienced in arranging funerals for everyone, regardless of their wishes, religion, faith or culture.

Peace of mind for the future

A Co-op funeral plan lets you plan and pay for your funeral in advance, protecting your loved ones against unexpected costs and uncertainty about your final wishes. And unlike others, our funeral plans come with a unique Co-op Commitment meaning we'll still cover the cost of your chosen funeral plan, even if you die before paying in full*. It's just one of the ways we'll do right by you.

Our funeral plans are also guaranteed to cover all third-party costs. That means we'll cover the cost of your chosen burial or cremation plan, even if prices rise in the future†.

You can relax, knowing your funeral will be carried out exactly as you wanted. We have over 1,000 funeral homes across the UK, so we're right at the heart of local communities.

Contact Us:

Email: LS&LPCorporatePartners@coop.co.uk

Website: https://www.co-operativefuneralcare.co.uk/

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The Co-op Commitment applies if you are paying in instalments over 2-25 years and 1 year has passed since the start date, instalments must be paid up to date and your funeral must be carried out by one of our Funeral Directors. See our terms and conditions.
†Co-op burial plans do not include the cost of buying a grave.
^Exclusions and restrictions apply see membership terms & conditions at coop.co.uk/terms/membership